

Are We Living in an Eastphalian Moment?

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2019-01-08T10:14:28

It is indisputable that economic and geopolitical power has shifted east and that the core-semi periphery-periphery symbolism, a common reference for liberal, socialist and postcolonial states, increasingly mischaracterizes the complexities of relations at play, as do voices who proclaim the beginning of the post-liberal world order. True, in liberal strongholds, nationalistically-minded authoritarianism is on the rise again, more subtle than in the first half of the 20th century, but with similar rhetoric. At the same time, financial flows and trade remains as globalized as ever, with new transnational trade deals being established with and between non-liberal parties, while the mobility of university students, arguably the future elites of any society is as much of a virtue in non-liberal states, as it is in liberal ones. For instance, in July 2018, Germany and China, the world's second and the fourth largest economies held their fifth round of inter-governmental [consultations](#) where the countries' leaders in a joint statement reaffirmed their commitment to free trade, while signing a trade deal worth 20 billion Euros – a commitment affirmed by economic actors in [both countries](#).

Indeed, China leaves no doubt to its commitment to free trade moving to legalize its foreign trade policies in instruments, such as the Trans-Pacific Partnership Agreement (TPP-11). The economy is not the only sphere where China has embraced liberal globalization. The country also champions international student mobility. In 2017 China was the world's largest source country of foreign students. Some may say that to the same extent non-liberalism has crept into traditionally liberal societies, liberalism has crept into traditionally non-liberal ones.

Some international lawyers have equated such embrace of liberal virtues to the embrace of international law, as the instrument cementing the progressive advancement of liberal ideas. Given China's rhetorical and practical embrace of the instrument of international law, it seems as if Westphalia has expanded East. Such an impression is created in particular by the commitment to a world order of peaceful co-existence of equal and sovereign states, guided by international legal principles of the UN Charter and the 1970 Friendly Relations Declaration (see e.g. the Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law, 25 June 2016). Yet, there is more to it. It after all it is not its commitment to the Westphalian order, but even more so, to the Uruguayan one, which pinpoints an expansion and possibly even a shift of liberalism from west to east by way of international law. After its first request for a WTO inquiry into the imposition of U.S. trade tariffs against Chinese goods by the Trump administration was rejected, a second request and the subsequent commencement of such an inquiry can be expected, should the U.S. walk back from its promise made during the G20 summit in Buenos Aires not to increase tariffs on certain Chinese products

from [10% to 25%](#). At the same time, much media attention had been given to the U.S. withdrawal from the TTIP and TPP negotiations in late 2016 and early 2017. The Impression that through the institution of international law, the Uruguayan order shifted east, is founded in such developments.

Yet such developments do not speak to shift nor expansion of liberal international law to the east. Assuming so would mean to walk into the trap of the core-semi periphery- periphery symbolism. This is so for two reasons.

First, some ideas of international law are embraced, others are not. And, in return, some core principles of liberal international law, which has so far associated with non-liberal states and in particular China appear to have come under attack in liberal states. It suffices to think of voter suppression practises in the 2018 congressional elections in the United States, or the mysterious murder of Maltese anti-corruption journalist Daphne Caruana Galizia.

Secondly, reality and rhetoric diverge, complicating the disentanglement between the finding of an expansion (commitment levels increase) opposed to a shift, (commitment levels decrease in one place and increase in another) even further. The last WTO trade policy review of the United States, published in November 2018 illustrates this point rather well. Despite its protectionist rhetoric, all existing U.S. BITs remained in force as did all free trade agreements, with the one exception of [NAFTA](#). Possibly, to the same extent that the rhetoric on non-commitment may diverge from commitment practices, the reverse is also often the case, with states violating international obligations despite their declared commitment – phenomena well-known in the human rights domain (Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. “Human Rights in a Globalizing World: The Paradox of Empty Promises.” *American Journal of Sociology* 110, no. 5 (2005): 1373-1411.)

So what does all of this mean for international law and its possible shift eastward? We would argue that geography as such is not a good indicator to measure neither shift, nor expansion of international law as such. Rather, we may be living in a moment in which international law travels differently than the ideal that it stands for. By this we mean, that it is well possible that the question of whether and how international law is received, depends not on state interest as it does on the interests of those individuals who are privileged enough to have any view on the rhetorical or practical advantages and disadvantages of engaging with it.

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Cite as: Lys Kulamadayil and Sulekha Agarwal, “Are We Living in an Eastphalian Moment?”, *Völkerrechtsblog*, 8 January 2018.

